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JOHN F. DAVIS, CL

In the Supreme Court of the United States

OCTOBER TERM, 1969.

No. 462.

WILLIAM SCOTT, JR.,
Petitioner,

VS.

THE OHIO CITIZENS TRUST CO.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF LUCAS COUNTY, OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

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STATEMENT OF THE CASE.

Respondent accepts the statement of the case as set forth in the Petition for Writ of Certiorari except as hereinafter noted.

On or about March 22, 1968, Petitioner herein, William Scott, Jr., filed an action in the U. S. District Court for the Northern District of Ohio, Western Division, against John J. Connors, Jr., the Judge of the Court of Common Pleas of Lucas County, Ohio, to whom the within case was assigned and before whom the case was pending on the said date seeking an injunction enjoining the said Judge from entering judgment against the said William Scott, Jr. That case was designated as No. C-68-65 on the docket of the said District Court. That case was argued before a three-judge court consisting of the Honorable Paul C. Weick, Chief Judge, U. S. Court of Appeals, the Honorable

Don J. Young, Judge, U. S. District Court for the Northern District of Ohio, Western Division, and the Honorable Frank L. Kloeb, Sr. District Judge, U. S. District Court for the Northern District of Ohio. The said case was submitted to the said three-judge court on the briefs and argument of counsel for the respective parties, and the court ordered that Plaintiff's prayer for an injunction and Defendant's motion to dismiss be sustained and dismissed the said cause. Thereafter, the Honorable Judge Connors entered the default judgment against Defendant, William Scott, Jr.

REASONS FOR DENYING THE WRIT.

Petitioner has set forth two questions which he feels are presented by his Petition for Writ of Certiorari. However, his sole argument is that since the immunity granted by Ohio Revised Code, Chapter 3763, is conditional upon return of illegally obtained goods, the proceeds of gambling, a price is being exacted for Petitioners' assertion of his constitutional rights. Petitioner relies essentially upon the following three cases:

Garrity vs. New Jersey, 385 U.S. 493;
Slochower vs. The Board of Education, 315 U.S. 551;
Spevack vs. Klein, 385 U.S. 511.

There is a very basic and very important distinction between those cases and the case at bar. In the *Garrity* and *Slochower* cases, the defendants, a police officer and a school teacher, respectively, were threatened with the loss of their employment if they invoked their Fifth Amendment privilege against self-incrimination. In the *Spevack* case, the defendant, an attorney at law, was threatened with loss of his license to practice law if he invoked the Fifth Amendment privilege against self-incrimination. The

thing threatened in each of those cases was something to which each of the defendants therein had a right. No such situation exists in the case at bar. The only threat made is with reference to illegally obtained goods, that is, proceeds of gambling. The Petitioner does not desire to protect his Fifth Amendment right. That is protected by the immunity granted him by the Ohio statute. The Petitioner seeks to protect the proceeds of his illegal conduct. Certainly this Court will not protect those goods for him.

The reason apparently proceeds from an assumption that a criminal has a right to the products of his criminal efforts and to deprive him of such constitutes a penalty. The situation is analogous to a claim by a bank robber that he would be penalized by being required to give up the money he has stolen.

None of the cases cited by Petitioner involve immunity. Consequently, Petitioner has overlooked a basic point of immunity cases, that is, that the immunity need not protect the witness from every undesirable effect of testifying, but only from criminal prosecution based upon the testimony. Thus, in the case of *Brown vs. Walker,* 161 U.S. 591, which was cited with approval in *Reina vs. U.S.,* 364 U.S. 507, among other cases, this court rejected the argument that the validity of an immunity statute should depend upon whether it shields the witness from personal disgrace or opprobrium attaching to the exposure of his crime. In the case of *Piemonte vs. U. S.,* 367 U.S. 556, this court held that the witness's fear for his life, for that of his wife, for two stepchildren, and his family did not, even if reasonable, justify his refusal to testify where immunity from prosecution had been granted.

Petitioner refers to the case of *Marchetti vs. U. S.,* 390 U.S. 39, which was decided the same day as *Grosso v. U. S.,* 390 U.S. 273. The situation in those cases is far different

from the situation in this case. In those cases the court went to great length in detailing the scheme pursuant to which information obtained under the tax laws of the U. S. was fed to state and local prosecuting authorities. Nothing present in this case would justify a similar conclusion. In fact, the only reported case in Ohio dealing with this chapter of the Ohio Revised Code is *Kleimeyer vs. Payne,* 16 O. D. (N.P.) 289, 30 L. R. 386, which was decided in 1905.

CONCLUSION.

It is respectfully submitted that no basis whatsoever exists for allowance of the writ sought by Petitioner. Petitioner's constitutional rights have not been violated and, accordingly, his Petition ought to be dismissed.

JOSEPH P. JORDAN,
Attorney for Respondent.